(28)

21/11/07.

HIGH COURT OF CHHATTISGARH, BILASPUR

D.B: HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI SUNIL KUMAR SINHA, J, J

Criminal Appeal No.705 of 2002

Umrao and 3 others

Vs.

State of Chhattisgarh

Judgment for consideration

Sd/-
Sunil Kumar Sinha
Judge

Hon'ble Shri Justice L.C. BHADOO

I agree

Sd/-
L.C. Bhadoo
Judge

Post for Judgment: 19 **.11.2007**

Sd/-
Sunil Kumar Sinha
Judge

(29)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 705 of 2002

APPELLANTS

1. Umrao, s/o Bisal sahu, aged about 38 years, r/o village Sonesarar, P.S. Lalbag.
2. Krishna sahu, s/o Likhan Sahu, aged about 23 years, r/o village Rupakathhi, P.O. Dongargaon
3. Chunnuram, s/o Bisal Sahu, aged about 29 years, r/o village Sonesarar, P.S. Lalbag.
4. Kushal Sahu, s/o Bisal Sahu, aged about 26 years, r/o village Sonesarar P.S. Lalbag,

All are residents of District Rajnandgaon (C.G).

Versus

RESPONDENT State of Chhattisgarh, Through P.S. Lalbag, Distt. Rajnandgaon.

(Appeal under Section 374 (2) of Cr.P.C.)

Appearance:

Shri Viprasen Agrawal, counsel for the appellants.

Shri U.K.S. Chandel, Govt. Advocate for the State/ respondent.

D.B: HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI SUNIL KUMAR SINHA, J,J.

JUDGMENT
(19 .11.2007)

Following judgment of the Court was delivered by

Sunil Kumar Sinha, J,

(1) This appeal is directed against the judgment of conviction and order of sentence dated 2nd May 2002 passed by the Sessions Judge, Rajnandgaon, in Sessions Trial No.59/2001 whereby the appellant Umrao has been convicted u/ss 450, 302, 302 & 323 I.P.C. and other appellants have been convicted u/ss 450, 302/34,

302/34 & 323/34 I.P.C. and each of them have been sentenced to undergo imprisonment for 3 years, life imprisonment in two counts and R.I. for 6 months respectively with a further direction to run the sentences concurrently.

(2) The allegations are that on 21.2.2001 at about 6 p.m., the appellants entered into the house of the complainant namely Ku.Lilesh and committed murder of Dauva Ram and Shobha Ram by assaulting them with Axe and *lathis*. The further allegations are that when Bhojbai (P.W.4) intervened, they caused injuries to her also. Deceased Dauva Ram was the husband of Bhojbai and deceased Shobha Ram was father of deceased Dauva Ram, as such, he was father-in-law of injured Bhojbai.

(3) The case of the prosecution is that Shobha Ram, Dauva Ram, Bhojbai (P.W.4), complainant Ku.Lilesh (P.W.1) and her sister Ku. Hirmat Bai, all were residing in a common house. On the fateful day, in the afternoon, Bhoj Bai had asked appellant Umrao, at the boring site of the village, that whether he had taken the bucket of Tularam ? because bucket of Tularam was lost. On this Umrao started quarreling with Bhojbai. This was an incident of about 12.00 – 1.00 in the noon. In the evening at about 5.30 – 6.00 p.m., all the above family members were in their house. The allegations are that on the above incident only, accused appellant Umrao, his brothers Kushal & Chunnu Ram and one Krishna Sahu entered into their house. Umrao was armed with *Tangia* and other accused persons were armed with *lathis*. They started beating Dauva Ram. Umrao had assaulted with Tangia and other accused persons had assaulted with lathis. When Bhojbai & Shobha Ram tried to intervene, Umrao assaulted Shoba Ram and Bhojbai with Tangia and other accused persons had also assaulted them with lathis. This incident was witnessed by P.W.1 Lilesh who is the daughter of Dauva Ram. The other two eye witnesses namely Bhuwan (P.W.2) & Yuvraj (P.W.3) had also witnessed the occurrence. It is stated that after the first instance of assault, the accused persons had gone away but they again returned back and assaulted the deceased persons and the victim Bhoj Bai. Due to

the above assault, Dauva Ram and Shobha Ram died and Bhojbai had sustained injuries.

(4) A *Dehati Nalishi*, at the instance of P.W.1 Lilesh, was recorded vide Ex.P.1. The site plan was prepared under Ex.P.2. The investigating officer after giving notice to *Panch* witnesses Ex. P-22A & P-24A prepared inquest on the body of Dauva Ram under Ex.P.23 and Shobha Ram under Ex.P-25. The dead bodies of both the deceased persons were sent for postmortem examination to the District Hospital, Rajnandgaon where Dr.R.R. Mandle (P.W.5) conducted the postmortem and prepared postmortem report of Dauva Ram under Ex.P.3 and postmortem report of Shobha Ram under Ex.P.4. He noticed as many as 14 injuries on the body of deceased Dauva Ram and 8 injuries on the body of deceased Shobha Ram. He opined that the cause of death of Dauva Ram was cardio respiratory failure due to fatal injury to brain tissue and intra cranial hemorrhage due to head injury. Cause of death of Shobha Ram was also cardio respiratory failure due to fatal injury to brain tissue, intra cranial hemorrhage and injury to heart and head injury. In further investigation, after taking the accused appellants in custody, memorandum of accused Umrao was recorded under Ex.P.8, in pursuance of which, an Axe and some clothes were seized under Ex.P.10. Memorandum of Krishna was recorded under Ex.P.6 in pursuance of which lathi and some clothes were seized under Ex.P.13. Memorandam of Kushal was recorded under Ex.P.7 in pursuance of which, lathi and some clothes were seized under Ex.P.12. Memorandum of Chunnu was recorded under Ex.P.9 which led to recovery of a lathi and some clothes under Ex.P.11. Another site plan was prepared under Ex.P.29. Based on the earlier information the first information report was registered under Ex.P.30. The seized articles were sent for their chemical examination under Ex.P.34. Report from the Forensic Science Laboratory was received under Ex.P.37, according to which, the blood stains were found on almost all the articles except the plain soil. Injured Bhojbai was sent for medical examination. She was examined by Dr.Rajesh Sharma (P.W.14) who prepared her injury report (Ex.P.19-A). She was admitted to

the hospital. Copy of her bed head ticket Ex.P.36-C was also seized.

(5) After completion of usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Rajnandgaon, who in turn committed the case to the Court of Sessions Judge, Rajnandgaon, who after conducting the trial, convicted and sentenced the accused appellants as aforementioned.

(6) Learned counsel for the appellants has not disputed the homicidal death of the deceased. More over, it comes in the evidence of P.W.1 Ku. Lilesh that on the fateful day, the accused persons entered into their house, Umrao was armed with Tangia and other accused persons were armed with lathis, they assaulted her father Dauva Ram and they had also assaulted her grand father Shobha Ram. The injury of Tangia blow was received on the occipital region of her father and also on the right eye and injuries from lathis were received on all over the body. Likewise she has deposed that her grand father was also assaulted by Tangia by accused Umrao and other accused persons had assaulted him by lathis. She has deposed that after the first instance the accused persons had gone out from the house but thereafter they again returned back and again assaulted the deceased persons and her mother Bhojbai (P.W.4). Bhojbai has also deposed about the injuries caused to her husband and her father in law (both the deceased persons) by all the accused persons.

(7) The aforesaid oral evidence is supported by the evidence of Dr.R.R. Mandle (P.W.5) who conducted the postmortem on the bodies of the deceased persons. He has deposed that on 22.2.2001 the body of the deceased Dauva Ram was brought to the District Hospital, Rajnandgaon where he has conducted the postmortem and has found the following injuries.

(i) Blood was oozing out from both the nostrils and right ear;

(ii) An incised wound size 2" x 1" x ½" at the lower back portion of the right ear;

(iii) Many big scratches on all over the body like right arm, right shoulder, upper portion of back on left and right scapula and also on the middle of back including many other abrasions;

(iv) An incised wound size 4" x 1" x ½" at the right side of back portion of the head. The bone beneath the injury was cut;

(v) An incised wound size 4" x 1" x ½" at the back portion of the right ear i.e. on skull;

(vi) An incised wound on the scalp size 4" x 1" x ½" on the front portion of the head;

(vii) An incised wound size 3" x 1" x 1" on the left middle portion of the head;

(viii) An abrasion size 1 cm x 1cm at the forehead above the left eye.

(ix) An abrasion size 3cm x 2cm at the right side of the face ;

(x) An abrasion size 3cm x 1cm at the left arm;

(xi) A punctured wound size ½ x ½ x ½ cm on the left leg;

(xii) A punctured wound size ½ x ½ x ½ cm near injury no.11;

(xiii) A punctured wound size ½ x ½ x ½ cm on the right leg;

(xiv) A contusion size 5 x 5 cm on the left lumbar region. Skin was blackish in colour.

In the internal examination he found that the brain membrane was congested, blood clots were present at many places and the scalp was full of blood. All the injuries were ante-mortem and homicidal in nature. The incised wounds were caused by sharp edged object and rest of the injuries were caused by hard and rough object. He has also deposed that he noticed the following injuries on the body of deceased Shobha Ram.

(i) A lacerated wound size 2 x 1 x ½ cm on the right hand;

(ii) The wrist joint of right hand was curved;

(iii) An incised wound size 3" x 1" x ½" at the right front portion of the head just above the right ear. Skull bone was cut;

(iv) A lacerated wound size 1" x ½" x ½" on the left ear;

(v) An incised wound size 2" x ½" x 2" at the left portion on the chest;

(vi) The left eye was closed. There was swelling around the eye along-with the blood clots. The right eye was opened;

(vii) Blood was coming out from the left ear and both the nostrils;

(viii) A contusion size 5 cm x 5cm on the joint of left mandible.

In the internal examination, he found that there was injury on the brain membrane. Scalp was full of blood. There was fracture in right 4th & 10th ribs. Thoracic cavity was full of blood. There was a hole in the left upper chamber of the heart. There was a fracture in the right wrist bone. All the injuries were ante-mortem in nature. The incised wound was caused by hard and sharp object whereas the other injuries were caused by hard and rough object. Therefore, on the basis of the above ocular and medical evidence, it is established that the death of deceased persons was homicidal in nature.

(8) As far as the complicity of the accused persons in crime in question is concerned, learned counsel for the appellants argued that Ku.Lilesh (P.W.1) & Bhojbai (P.W.4) are the close relatives of the deceased, therefore they are "interested" witnesses and their evidence should not be relied upon. As regards the other two eye witnesses namely Bhuwan (P.W.2) & Yuvraj (P.W.3), he argued that on the basis of their evidence as also the evidence of other eye witnesses, it would appear that in fact they have not witnessed the occurrence, therefore, the complicity of the accused persons in crime in question is doubtful.

(9) On the other hand, learned counsel for the State opposed these arguments and has supported the judgment of conviction and order of sentence passed by the trial Court.

(10) Admittedly, the conviction of the accused persons is based upon the testimonies of 4 eye witnesses, referred to above.

(11) As far as the evidence of P.W.2 Bhuwan & P.W.3 Yuvraj is concerned, Bhuvan has deposed in para 1 of his evidence that he does not know the accused persons by name. However, in para 2 he has deposed about the occurrence and the role played by each of the accused persons by taking their names. It comes in para 6 of his cross examination that at the time of occurrence he was working along-with son of his brother-in-law Yuvraj (P.W.3) in the Kothar (a place for thrashing the crop) of Tularam. He has specifically deposed in para 7 that when he heard the commotion, he saw from the Kothar that the incident is taking place in the manner indicated by him in para 3. He has denied that Kothar is situated in a field which is at the depth of 4-5 ft. This suggestion was made with an intention that he would not be able to see the occurrence while standing from Kothar.

(12) If we appreciate this evidence in the light of evidence of P.W.1 Ku. Lilesh, it would appear that Lilesh has admitted vide para 14 of her evidence that Tularam & Baliram are real brothers. Yuvraj (P.W.3) is son of Tularam and Bhuwan (P.W.2) is brother-in-law of Tularam. Yuvraj and Bhuwan were present at the Kothar. Tularam and Yuvraj were in visiting terms with their family and she has very categorically admitted that from their house, the Kothar of Tularam is not visible where Bhuvan (P.W.2) & Yuvraj (P.W.3) were thrashing some crop because there are some bushes, houses and obstructions in between these two places. More over, if we look into the map prepared during the course of investigation, it comes that there are structures and obstructions in between these two places. Therefore, it can be inferred that a person who is standing in *Kothar* of Tularam would not be able to see the occurrence which was going on in the courtyard of the house of the deceased persons. Yuvraj (P.W.3) has also deposed in the manner

of P.W.2 and has admitted in para 1 of his evidence that he was thrashing some crop in the Kothar alongwith Bhuvan from where he saw the incident. Therefore, in appreciation we find that version of these two eye witnesses namely Bhuvan P.W.2 and Yuvraj P.W.3 cannot be relied on in light of evidence of P.W.1 as also in light of spot map because it was not possible for them to see the seen of occurrence from the place (Kothar of Tularam) where they were working at the time of incident and the Sessions Court has wrongly relied on their evidence.

(13) As far as P.W.1 Ku. Lilesh and P.W.4 Bhujbai are concerned, as stated above, learned counsel for the appellants has argued that they are most interested witnesses being the daughter and wife of deceased Duavaram and grand daughter & daughter-in-law of deceased Shobha Ram, therefore, their evidence cannot be relied on. This argument advanced by learned counsel for the appellants has no force.

(14) It has been held by the Apex Court in the matter of ***Rizan and another –Vs- State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur, AIR 2003 S.C. 976***, in para 6, that the relationship is not a factor to affect credibility of a witness. It is more often than not a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such a case, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

(15) Relying upon the decision of the Apex Court in ***State of U.P. –Vs- Paras Nath Singh and others AIR 1973 S.C. Pg.1073,*** the Division Bench of the Kerala High Court also held in the matter of ***Sahadevan Rajan and others –Vs- State of Kerala, 1992 CRI.L.J. 2049*** that the straightforward and trustworthy evidence of relations of the deceased need not corroboration for sustaining the conviction. Such evidence cannot be discarded on the sole ground of interestedness in the prosecution case.

(16) In ***Namdeo –Vs- State of Maharashtra, 2007 AIR SCW 1835***, the Apex Court held that a witness who is a relative of deceased or victim of the crime cannot be characterized as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive. The Apex Court also observed that a close relative cannot be characterized as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.

(17) If we scrutinize the evidence of P.W.1 & P.W.4, P.W.1 is a child witness, she was aged about 13 years and was a student of Class VIII. Her presence on the scene of occurrence cannot be doubted because the incident took place in her own house in which her father and grand father lost their lives and her mother sustained injuries. She has categorically deposed that the accused persons entered into their house, Umrao was armed with Tangia and other accused persons were armed with lathis. They all assaulted her father Dauva Ram, her father received Tangia blows on his occipital region and on his right hand. Lathi blows were received on the other parts of the body. She has witnessed the occurrence. When the attack was going on, her mother P.W.4 Bhojbai came to the house because prior to it, she had gone to answer the call of nature. She was also assaulted by the accused persons. She also received injury on her head and leg. She has further deposed that when her grand father, deceased Shobha Ram, came to intervene the accused persons also assaulted him with Tangia, due to which he fell down and thereafter he was assaulted by lathis. She has deposed that there after the accused persons went from the house but just after a while, they again

returned back and again assaulted her father and grand father. This evidence of P.W.1 is supported by the contents of *Dehati Nalishi* Ex.P.1 which was recorded on her information. She had given information almost in similar fashion which she has deposed in her court evidence. Names of all the accused persons are mentioned in *Dehati Nalishi* and the evidence of this witness is corroborated by *Dehati Nalishi.*

(18) P.W.4 Bhojbai is an injured witness, therefore, her presence can also not be doubted at the scene of occurrence. She has deposed in para 4 of her evidence that she had gone to answer the call of nature and when she heard the commotion, she rushed to her house and saw that all the accused persons were present in her house, accused Umrao was armed with Tangia and other accused persons were armed with lathis. Her husband was attacked by Umrao by Tangia and other accused persons attacked him with lathis. She has further deposed that when her father-in-law came to intervene, Umrao also assaulted him with Tangia and other accused persons assaulted him with lathis. Thereafter the accused persons also attacked over her. Umrao attacked over her by wooden portion of Tangia due to which she fell down on the ground and thereafter, she was attacked by Krishna, Chunnu & Kushal by lathis.

(19) The evidence of these two witnesses is corroborating each other on material points. Though, lengthy cross-examinations of these witnesses have been done, but the defence has not been able to elicit any such circumstance on the basis of which either their presence at the place of occurrence may be doubted or it can be inferred that they have not seen the occurrence or that they are falsely implicating the accused persons. Both the witnesses have deposed about the manner in which the occurrence took place. They have also deposed about the weapons carried by the accused persons and they have clearly deposed about the weapons used by them. As stated above, admittedly, they are the inmates of the house and their presence at the scene of occurrence cannot be doubted because they were bound to remain present in their own

39

house. Moreover, P.W.4 Bhojbai is an injured witness, which further strengthened her claim that she was present at the scene of occurrence and she had witnessed the crime. Therefore, in appreciation of evidence of these two witnesses which is corroborated by the medical evidence and which is supporting to each other, we find that their evidence is intrinsically reliable and wholly trustworthy and there does not appear any inherent lacuna in their evidence so as to hold them unreliable or untrustworthy. The trial Court has also relied on the evidence of these two witnesses and has convicted the accused appellants as aforementioned. The trial Court has also considered the plea of alibi raised by the appellants and on the face of version of the eye witnesses, the aforesaid plea has been rejected. Therefore, we do not find any illegality or infirmity in the judgment of conviction and order of sentence passed by the trial Court. The judgment can be sustained on the evidence of above two witnesses which is clinching, reliable and cogent.

(20) The appeal is devoid of merit and the same is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Rao